

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF VIRGINIA  
BIG STONE GAP DIVISION**

<b>FORD STANLEY WARD,</b>	)	
	)	
Plaintiff,	)	Case No. 2:09CV00053
	)	
v.	)	
	)	<b>OPINION</b>
<b>MICHAEL J. ASTRUE,</b>	)	
<b>COMMISSIONER OF</b>	)	By: James P. Jones
<b>SOCIAL SECURITY,</b>	)	Chief United States District Judge
	)	
Defendant.	)	

*P. Heath Reynolds, Wolfe, Williams, Rutherford & Reynolds, Norton, Virginia, for Plaintiff; Eric P. Kressman, Regional Chief Counsel, Region III, Heather Benderson, Assistant Regional Counsel, and Victor J. Pane, Special Assistant United States Attorney, Office of the General Counsel, Social Security Administration, Philadelphia, Pennsylvania, for Defendant.*

In this social security disability case, I affirm the decision of the Commissioner.

**I**

The plaintiff, Ford Stanley Ward, filed this action challenging the final decision of the Commissioner of Social Security (“Commissioner”), denying his claims for disability insurance benefits and a period of disability pursuant to title XVI of the Social Security Act (“Act”), 42 U.S.C.A. §§ 401-33, 1381-1383d (West 2003 & Supp. 2009). Jurisdiction of this court exist pursuant to 42 U.S.C.A. § 405(g).

Ward protectively filed for benefits in April 2007, alleging disability beginning April 5, 2007, due to rheumatoid arthritis, colitis, chronic obstructive pulmonary disease (“COPD”), and problems with his back and knees. His claim was denied initially and upon reconsideration. Ward had a hearing before an administrative law judge (“ALJ”), at which he was present and represented by counsel. In addition to Ward, a vocational expert (“VE”) testified at the hearing. The ALJ denied Ward’s claim and the Social Security Administration’s Appeals Counsel denied Ward’s request for a review of the ALJ’s opinion. Ward then filed this action, objecting to the Commissioner’s final decision.

The parties have filed cross motions for summary judgment, and have briefed the issues. The case is ripe for decision.

## II

Ward was 52 years old at the time of the ALJ hearing, which classifies him as a “person closely approaching advance age” under 20 C.F.R. § 404.1563(d) (2009). Ward has a high school education. His past work experience includes jobs as a coal miner, a coal equipment operator, a mine machine mechanic, a mine electrician, and a utility maintenance supervisor. Ward has not engaged in substantial gainful activity since his alleged onset date of disability.

The record reflects that Ward has suffered from multiple physical ailments. He was consistently diagnosed with rheumatoid arthritis, and it was noted that the condition was advanced and progressive. In physical examinations, it was observed that the rheumatoid arthritis was visible and the impact was profound. Further, Ward has been diagnosed with irritable bowel syndrome with colitis, degenerative lumbar disc disease, chronic obstructive pulmonary disease, emphysema, chronic pain syndrome, spondylolisthesis, lumbar interspinous bursitis, and chronic fatigue syndrome. Physical examinations often revealed swelling of his joints and tenderness in his wrist, back, and knees. Moreover, he was observed at times to have shortness of breath and other problems with his lungs.

Psychologically, the record shows that Ward has been diagnosed with depression and anxiety. However, Ward was often found to be alert and oriented, in no acute distress, cooperative, and able to relate and communicate well. Ward claimed that his depression and anxiety stemmed from physical problems preventing him from working. In June 2007, testing indicated that Ward suffered from severe anxiety and depression. He was assessed with a Global Assessment of Function (“GAF”) score of 51.<sup>1</sup>

---

<sup>1</sup> The GAF scale ranges from zero to 100 and “[c]onsider[s] psychological, social, and occupational functioning on a hypothetical continuum of mental health-illness.” *Diagnostic and Statistical Manual of Mental Disorders* (“DSM-IV”) 32 (Am. Psychiatric Assoc. 4th ed. 1994).

Reviewing Ward's medical history, the ALJ found that he had the following severe impairments: history of rheumatoid arthritis, irritable bowel syndrome/colitis, chronic fatigue syndrome, depression, and anxiety. However, the ALJ found that the severe impairments did not meet or medically equal one of the listed impairments in 20 C.F.R. Part 404, Subpart P, Appendix 1 (2009). The ALJ determined that Ward had the residual functional capacity to perform light work, which required no more than occasional climbing of ramps and stairs, balancing, stooping, kneeling crouching, and crawling. He must avoid exposure to extreme temperatures, excess humidity, pollutants, and irritants and cannot climb ladders, ropes and scaffolds, work around hazardous machine, work at unprotected heights or on vibrating surfaces. He is limited to occasional social interaction, and he can only perform simple, routine, repetitive, unskilled tasks.

The VE testified that an individual with limitations similar to Ward's from could perform jobs existing in significant numbers in the national and regional economies, including working as a fast food worker, parking lot attendant, laundry worker, car wash attendant, and cashier.<sup>2</sup> Accordingly, the ALJ found that, even

---

A GAF of 51-60 indicates "[m]oderate symptoms . . . or moderate difficulty in social, occupational, or school functioning." *Id.*

<sup>2</sup> The Commissioner concedes that the ALJ failed to include the occasional interaction and cooperation limitation in the hypothetical placed before the VE.

though he could not perform his past relevant work, Ward was not disabled. Ward argues that the ALJ's decision is not supported by substantial evidence.

### III

The plaintiff bears the burden of proving that he is suffering from a disability. *Blalock v. Richardson*, 483 F.2d 773, 775 (4th Cir. 1972). The standard for disability is strict. The plaintiff must show that his "physical or mental impairment or impairments are of such severity that he is not only unable to do his previous work but cannot, considering his age, education, and work experience, engage in any other kind of substantial gainful work which exists in the national economy." 42 U.S.C.A. § 423(d)(2)(A).

In assessing claims, the Commissioner applies a five-step sequential evaluation process. The Commissioner considers whether the claimant: (1) has worked during the alleged period of disability; (2) has a severe impairment; (3) has a condition that meets or equals the severity of a listed impairment; (4) could return to his past relevant work; and (5) if not, whether he could perform other work present in the national economy. *See* 20 C.F.R. § 404.1520(a)(4) (2009). If it is determined at any point in the five-step analysis that the claimant is not disabled, the inquiry immediately ceases. *Id.*; *Bennett v. Sullivan*, 917 F.2d 157, 159 (4th Cir. 1990). The

fourth and fifth steps of the inquiry require an assessment of the claimant's residual functional capacity, which is then compared with the physical and mental demands of the claimant's past relevant work and of other work present in the national economy. *See Reichenbach v. Heckler*, 808 F.2d 309, 311 (4th Cir. 1985).

In accordance with the Act, I must uphold the ALJ's findings if substantial evidence supports them and they were reached through application of the correct legal standard. *Craig v. Chater*, 76 F.3d 585, 589 (4th Cir. 1996). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson v. Perales*, 402 U.S. 389, 401 (1971) (internal quotation marks and citation omitted). This standard "consists of more than a mere scintilla of evidence but may be somewhat less than a preponderance." *Laws v. Celebrezze*, 368 F.2d 640, 642 (4th Cir. 1966). It is the role of the ALJ to resolve evidentiary conflicts, including inconsistencies in the evidence. *Hays v. Sullivan*, 907 F.2d 1453, 1456 (4th Cir. 1990). It is not the role of this court to substitute its judgment for that of the Commissioner. *See Id.*

Ward first argues that he is mentally limited to a greater extent than found by the ALJ, and he contends that by not finding further limitations the ALJ substituted her opinion for that of a trained professional. I disagree.

In June 2007, Ward underwent a psychological evaluation performed by Dr. L. Andrew Steward. Dr. Steward observed that Ward was well developed, alert and oriented, communicated appropriately, and had average memory functions. Ward reported that not working depressed him, and he reported that in the past he belittled those who did not work. Testing revealed that Ward had above average intelligence. However, Ward tested positive for severe anxiety, although no behaviors occurred to a severe degree, and depression. Dr. Steward diagnosed Ward with anxiety and depressive disorders and assessed him with a GAF of 51. He opined that Ward was disabled for at least one year and that his prognosis was poor.

In August 2007, Dr. Howard Leizer, a state agency psychologist, found that Ward suffered from anxiety but would not experience any limitations. Likewise, a second state agency psychologist, Dr. Eugenie Hamilton, found that while Ward suffered from depressive and anxiety disorders, he would not experience any limitations.

After considering the evidence, the ALJ found that Ward suffered from depression and anxiety. However, when looking at the objective evidence and Ward's daily activities, the ALJ found that these conditions were not disabling. The ALJ found that Dr. Steward's opinion that Ward was disabled was contradicted by

other evidence of record. Ward claims that by ignoring Dr. Steward's finding of disability the ALJ substituted her opinion for that of Dr. Steward.

"In the absence of any psychiatric or psychological evidence to support [her] position, the ALJ simply does not possess the competency to substitute [her] views on the severity of plaintiff's psychiatric problems for those of a trained professional." *Grimmett v. Heckler*, 607 F. Supp. 502, 503 (S.D. W. Va. 1985) (citing *Mclain v. Schweiker* 715 F.2d 866 (4th Cir. 1983); *Oppenheim v. Finch*, 495 F.2d 396, 397 (4th Cir. 1974)).

In spite of the plaintiff's argument, I find that the ALJ did not exceed her proper role. First, only an ALJ can determine disability. A statement by a medical source that a claimant is "disabled" or "unable to work" is not definitive. *See* 20 C.F.R. § 404.1527(e). Second, the ALJ's opinion is supported by substantial evidence of record.

Moreover, when applying for benefits Ward did not note any mental conditions that prevented him from working, and he has never sought nor received mental health treatment. Further, it was noted that the conditions were controlled with medication. "If a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross v. Heckler*, 785 F.2d 1163, 1166 (4th Cir. 1986). Thus, the ALJ's



mental residual functional capacity findings were supported by substantial evidence and a consultative examination was not necessary.

Next, Ward argues that the ALJ erred because the hypothetical presented to the VE did not contain all the limitations found by the ALJ. The Commissioner concedes that the ALJ did not include the limitation, which she ultimately found in her decision, that Ward should not work in a position requiring more than occasional interaction/cooperation with co-workers and the general public.

“In order for a vocational expert’s opinion to be relevant or helpful, it must be based upon a consideration of all . . . evidence in the record . . . and it must be in response to proper hypothetical questions which fairly set out all of claimant’s impairments.” *Walker v. Bowen*, 889 F.2d 47, 50 (4th Cir. 1989) (citations omitted). The Commissioner may not rely upon the answer to a hypothetical question if the hypothesis fails to fit the facts. *See Swaim v. Califano*, 599 F.2d 1309 (4th Cir. 1979). The determination of whether a hypothetical question fairly sets out all of a claimant’s impairments turns on two issues: (1) whether the ALJ’s finding as to the claimant’s residual functional capacity is supported by substantial evidence; and (2) whether the hypothetical adequately sets forth the residual functional capacity as found the by ALJ.

Clearly, and as the Commissioner admits, the hypothetical did not set forth the exact residual functional capacity found by the ALJ. However, the Commissioner argues that this does not affect the decision because two of the occupations noted by the VE, laundry worker and automatic car wash attendant, did not require more than occasional interaction or cooperation with others. *See Dictionary of Occupational Titles* (4th ed. 1991) §§ 361.684-014, 1991 WL 672983 (laundry worker), 915.667-010, 1991 WL 687869 (automatic car wash attendant). I agree. The erroneous hypothetical did not change the outcome of the decision as the VE identified two occupations that fit within the parameters of the limitation that was omitted. Thus, the ALJ's mistake was a harmless error. *See Austin v. Astrue*, 2007 WL 3070601, \*6 (W.D. Va. Oct. 18, 2007) (citing *Camp v. Massanari*, 22 F. App'x 311 (4th Cir. 2001)); *see also Fisher v. Bowen*, 869 F.2d 1055, 1057 (7th Cir. 1989) ("No principle of administrative law or common sense requires us to remand a case in quest of a perfect opinion unless there is reason to believe that the remand might lead to a different result.")

Lastly, Ward claims that the ALJ's decision should be remanded because she did not properly consider the effects of the rheumatoid arthritis in his hands and arms. The ALJ found that Ward had a history of rheumatoid arthritis and limited him to

light work. The ALJ noted that the condition was not disabling because it was under control and present while Ward was still employed.

As stated above, Ward was consistently diagnosed with rheumatoid arthritis, or a history of rheumatoid arthritis was noted. In fact, Dr. J. P. Sutherland, Ward's treating physician, opined that the condition was disabling. However, the record reflects that Ward's rheumatoid arthritis, while still a problem, was improving and reasonably controlled by medications.

At an August 2007 examination, Ward reported that he was experiencing relief with the use of Azulfidine, a medication used to treat rheumatoid arthritis. As previously noted, "[i]f a symptom can be reasonably controlled by medication or treatment, it is not disabling." *Gross*, 785 F.2d at 1166. Further, during this examination, Ward's grip strength and fine manipulation were intact and the upper extremities were free of deformity, redness, or swelling. Moreover, he could grasp a doorknob, open a door with both hands without difficulty, pick up a paper clip, coin, and pen from the table with each hand without difficulty, and write his name. The examining doctor ultimately noted that he could not find any joint abnormalities. In November 2007, Ward was seen by Dr. Michael Bible, who noted that his rheumatoid arthritis was improving and there was little swelling and tenderness in the joints. At a follow-up appointment in May 2008, it was noted that Ward was doing

well, and the doctor found that his rheumatoid arthritis “seem[ed] to be a little better controlled than in the past.” (R. at 383.)

Thus, in light of the foregoing substantial evidence of record, it was clear that while Ward suffered from rheumatoid arthritis, the condition was not disabling. Accordingly, the ALJ’s decision was supported by substantial evidence of record.

#### IV

For the foregoing reasons, the plaintiff’s Motion for Summary Judgment will be denied, and the Commissioner’s Motion for Summary Judgment will be granted. An appropriate final judgment will be entered affirming the Commissioner’s final decision denying benefits.

DATED: May 3, 2010

/s/ JAMES P. JONES  
Chief United States District Judge